IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 975 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANILAL DHARMABHAI MAKWANA - Petitioner(s)
Versus
CHAMPABEN SANKARBHAI PARMAR & 6 - Respondent(s)

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Appearance :
MR MAHENDRA K PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR JK PARMAR for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 3 - 7.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

1. In the present petition, the petitioner husband has challenged an order dated 7th February, 2005

passed by the learned Civil Judge(S.D.), Patan in HMP No.44/2004.

2. The respondents are wife and children of the petitioner. Before the trial Court, the wife had approached with a prayer for restoration of conjugal rights. She simultaneously filed application exh. 4 seeking interim alimony for herself and maintenance of her children. The application came to be partially allowed by impugned order dated 7th February, 2005.

3. Before the Court, the case of the plaintiff was that the petitioner herein is engaged as driver of the AMTS bus and withdrawing salary of Rs.15,000/- per month. Though this fact was not proved in the Court, it is not in dispute that the petitioner is a regular driver in AMTS. His pay scale shows that he receives monthly salary of Rs.8724/-. On that basis learned Judge was of the opinion that he should pay maintenance of Rs.1,000/- to his wife and Rs. 500/- each to his five children. In all therefore, the petitioner has to pay a sum of Rs. 3500/-, leaving aside the sixth child who has become major, to his wife and five children.

4. Learned advocate Shri Mahendra K. Patel for the petitioner submitted that the petitioner has always been ready and willing to take back wife in her matrimonial home and that it was wife who

had deserted the petitioner. However, these are issues which can be gone into only at the time of trial of the pending proceedings. Suffice it to say that learned Judge has committed no jurisdictional error permitting this Court to reassess the order of the Court in exercise of powers under Article 227 of the Constitution of India.

5. As noted earlier, the petitioner has steady job paying him approximately Rs. 8724/- per month. It may be true that a part of the said sum may be reduced on account of certain deductions. Nevertheless, a total contribution of Rs. 3500/- therefrom for maintenance of as many as six persons, cannot be termed as unjust.

6. Under the circumstances, I find no merits in the petition and same is therefore, dismissed. Rule is discharged. No costs.

(Akil Kureshi,J.)

(raghu)